



**International
AIDS Society**

Stronger Together

August 1, 2009

Division of Global Migration and Quarantine
Centers for Disease Control and Prevention
U.S. Department of Health and Human Services
Attn: Part 34 NPRM Comments,
1600 Clifton Road, N.E.,
MS E-08
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Docket ID: CDC-2008-0001
**Docket Title: Medical Examination of Aliens – Removal of Human
Immunodeficiency Virus (HIV) Infection from Definition of
Communicable Disease of Public Health Significance**
RIN: 0920-AA26

The International AIDS Society (IAS), the world's independent association of over 14,000 HIV/AIDS professionals from 188 countries, supports the proposed rule that would lift the immigration ban on visitors and immigrants living with HIV, stop unfair mandatory HIV testing of immigrants and remove references to HIV from the scope of examinations in its regulations. IAS believes this proposed rule, once implemented, will have individual, national and global significance.

Our comments are organized thematically:

1. IAS believes there is no scientific or public health justification for HIV-related restrictions on entry, stay, and residence.

According to the U.S. government's own agencies, HIV is transmitted through bodily fluids, is not airborne and is not transmitted through casual contact.

Public health officials within the United States have acknowledged that there is no public health justification for excluding people with HIV. When commenting on its own HIV-specific restrictions in 1991, the Centers for Disease Control and Prevention (CDC) stated: "The risk of (or protection from) HIV infection comes not from the nationality of the infected person, but

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from the specific behaviors that are practiced. Again, a careful consideration of epidemiological principles and current medical knowledge leads us to believe that allowing HIV-infected aliens into this country will not impose a significant additional risk of HIV infection to the U.S. population, where prevalence of HIV is already widespread.”¹

From a public health perspective, encouraging people living with HIV to take antiretroviral drugs minimizes the likelihood of developing drug resistance by not skipping doses. In surveys done over the past decade, it appears HIV-specific entry and immigration restrictions have pressured some people to conceal their HIV status from U.S. immigration authorities by not bringing HIV medicines with them on international trips. Repealing this ban will allow HIV-positive travelers to continue their medication uninterrupted.

2. IAS believes the current US restrictions on entry, stay and residence based on HIV status are discriminatory.

Since there is no evidence that entry and residence restrictions based on HIV status are an effective public health strategy, the differential treatment based on HIV status is discriminatory and not justified. The current US policy promotes discrimination against HIV-infected immigrants and causes many immigrants to avoid HIV testing or treatment for fear of deportation and stigma.

This regrettable policy contradicts the historical leadership position of the United States in science, research and development, public health and in the global fight against AIDS. The current policy prevents or hinders people living with HIV, ironically including those who have benefited from the U.S. President's Emergency Plan for AIDS Relief (PEPFAR), from entering the United States and participating in critical meetings that shape global HIV policy and research. Because of this policy, important public health meetings and HIV conferences such as those hosted by the International AIDS Society have not been held in the United States since 1990.

3. IAS believes enforcement of HIV-related restrictions on entry, stay and residence can, and does, violate other human rights.

The implementation of HIV-related restrictions on entry, stay, and residence can also interfere with the rights to life, privacy, liberty, work and as CDC

¹ Public Health Service (1991), “*Medical Examination of Aliens.*” 56 Fed. Reg 2,484 (codified at 42 CFR 34).

mentions even within their own justification for this rule, the right to protect the unity of the family.

4. IAS believes HIV-related restrictions on entry, stay and residence can impede effective responses to HIV and fuel HIV Stigma.

Since the beginning of the epidemic, it has been repeatedly recognized that it is essential to protect the rights and dignity of people living with HIV and to involve them in the response to HIV not only because it is right but because it leads to the most effective responses to HIV. This has been confirmed by governments in the Declaration of Commitment on HIV/AIDS (2001)² and the Political Declaration on HIV/AIDS (2006).³ The Joint United Nations Programme on HIV/AIDS (UNAIDS) established an international task team on HIV-related travel restrictions and found that HIV-related restrictions on entry, stay and residence might be harmful to the public health of both citizens and travelers because they:

- Misdirect resources into intimidating screening and enforcement activities versus using these resources to expand voluntary HIV counselling and testing, prevention, treatment and care;
- Drive HIV prevention and care issues, as well as those *living* with HIV, underground, with negative outcomes for both individual and public health.

The US Government invests its expertise and resources to reduce HIV/AIDS stigma through programmes like PEPFAR, the Global Fund to Fight AIDS, TB and Malaria and other domestic and international programmes. The proposed rule will align the US Government with its expressed commitment to reducing HIV stigma.

Comments on specific areas in the ruling.

Within the ruling, CDC request specific input into the following areas.

Mandatory HIV Testing (Page 27)

We support the CDC in its adoption of the approach to remove HIV testing from the routine medical examination of lawful permanent resident applicants.

² UN Document A/RES/S-26/2 available on-line at <http://www.un.org/ga/aids/docs/aress262.pdf>

³ See para.20, UN Document A/RES/S-26/2. Available on-line at http://data.unaids.org/pub/Report/2006/20060615_HLM_PoliticalDeclaration_ARE_S60262_en.pdf

IAS believes all HIV testing should be done to promote better health, not for exclusionary or punitive purposes. Mandatory testing for HIV infection should no longer be required as described in the proposed rule. People living with HIV should be allowed to enter the U.S. or adjust to permanent resident status if they meet all other conditions of admissibility. There are clear and important benefits to be accrued from HIV testing. Such testing, however, should not be mandated as part of the routine medical examination for entry into the United States.

Migrating to the US for HIV treatment? (Page 34)

We support CDC's assumption that growing access to HIV treatment and care minimizes likelihood of migrants seeking to enter the US for HIV-related care. Ten years ago there was less than US\$1 billion available for HIV programmes globally. By 2009, there is US\$14 billion available. These investments have generated substantial returns in addressing the HIV epidemic – in particular, four million people in resource poor settings who would otherwise be dead are now on HIV treatment – at low cost or free of charge – and alive. As a result of global investments in HIV, there is wider availability of HIV treatment in all countries, clinics and hospitals are being refurbished; laboratory and diagnostic capacity is being strengthened; additional cadres of health workers are being mobilized; and services for HIV are aiming for global universal access. There is no evidence to show that people will migrate to the United States for HIV treatment, care and support.

Costing/economic benefits of HIV-positive migrants (page 37)

In its estimate of the costs of the proposed rule, CDC does not explicitly differentiate costs between public and private payers. Significant proportions of these estimated costs would be paid for by other payers outside of the U.S. government such as private insurance and contributions by the individual or by his or her sponsor or family. Most immigrants are not eligible to receive means-tested public benefits for five years after their entry into the U.S. All immigrants to the United States must document that they will not be a public charge.

Costing/HIV care vs. other chronic illnesses (page 38)

The CDC acknowledges that people with HIV may consume fewer health care resources than immigrants with other conditions. The costs of treating immigrants with other significant health concerns, e.g., heart disease, renal disease, diabetes, are not considered in determining immigration policy for individuals with these conditions and should not be a factor in setting immigration policy for people with HIV.

Onward HIV transmission model (page 35)

There are several ways to model onward HIV transmission. In our estimate, the model used by CDC seems appropriate. It is important however to note

research currently underway to better document the public health benefits of HIV treatment. Scientific evidence has confirmed that viral load is the single most important determinant of the risk of HIV transmission in any setting. The recently published WHO modeling (Granich et al, Lancet 2008) study suggests that annual universal testing, immediately followed by ART for all who test positive (irrespective of CD4+ count or viral load) on a voluntary basis could eliminate HIV infection. This strategy could lead to marked reductions in morbidity, mortality and HIV incidence (an estimated 95% incidence reduction in 10 years, if adopted in the pending US National HIV/AIDS Strategy under development.

Potential political asylum cases (Page 43)

We are not qualified to comment on the number of potential asylum/humanitarian cases that might be born from this proposed rule change. It is important to note here though that the enforcement of HIV-specific entry and residence restrictions has resulted in denial of the right to seek political asylum, leaving HIV-positive people in perilous situations that have nothing to do with their HIV status.

Conclusion on economic burden of the regulation (Page 52)

People living with HIV can now lead long and productive working lives, and can and do produce significant economic benefits for host countries. There are 103 countries with no restrictions on entry and stay based on HIV status. These governments have not reported any problems in terms of either public health or an undue burden on public monies. These include such diverse countries as: Austria, Argentina, Brazil, Canada, France, Hong Kong, Indonesia, Japan, Kenya, Kyrgyzstan, Libya, Mexico, Mozambique, Myanmar, Nepal, Norway, Philippines and Switzerland.

For these reasons, IAS fully supports the removal of HIV from the definition of "communicable diseases of public health significance" as well as to remove references to "HIV" from the scope of examinations in its regulations.

The US Government is the global leader in funding HIV research and implementation of evidence-based HIV prevention, care and treatment programmes. The proposed rule will align the US Government with the US scientific and public health communities' leadership in international HIV policy and global health.

If we can provide any further clarification on our comments, please do not hesitate to contact us.

Thank you.

Yours sincerely,